

years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

[71 FR 25392, Apr. 28, 2006 as amended at 71 FR 74794, Dec. 13, 2006]

**§ 96.305 Retired unit exemption.**

(a)(1) Any CAIR NO<sub>x</sub> Ozone Season unit that is permanently retired and is not a CAIR NO<sub>x</sub> Ozone Season opt-in unit under subpart IIII of this part shall be exempt from the CAIR NO<sub>x</sub> Ozone Season Trading Program, except for the provisions of this section, § 96.302, § 96.303, § 96.304, § 96.306(c)(4) through (7), § 96.307, § 96.308, and subparts BBBB and EEEE through GGGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO<sub>x</sub> Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The permitting authority will allocate CAIR NO<sub>x</sub> Ozone Season allowances under subpart EEEE of this part to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section

shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO<sub>x</sub> Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the

first date on which the unit resumes operation.

[70 FR 25382, May 12, 2005, as amended at 71 FR 25393, Apr. 28, 2006]

**§ 96.306 Standard requirements.**

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO<sub>x</sub> Ozone Season source required to have a title V operating permit and each CAIR NO<sub>x</sub> Ozone Season unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 96.322 in accordance with the deadlines specified in § 96.321; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO<sub>x</sub> Ozone Season source required to have a title V operating permit and each CAIR NO<sub>x</sub> Ozone Season unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart IIII of this part, the owners and operators of a CAIR NO<sub>x</sub> Ozone Season source that is not otherwise required to have a title V operating permit and each CAIR NO<sub>x</sub> Ozone Season unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCCC of this part for such CAIR NO<sub>x</sub> Ozone Season source and such CAIR NO<sub>x</sub> Ozone Season unit.

(b) *Monitoring, reporting, and record-keeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO<sub>x</sub> Ozone Season source and each CAIR NO<sub>x</sub> Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHHH of this part shall be

used to determine compliance by each CAIR NO<sub>x</sub> Ozone Season source with the CAIR NO<sub>x</sub> Ozone Season emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides ozone season emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO<sub>x</sub> Ozone Season source and each CAIR NO<sub>x</sub> Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO<sub>x</sub> Ozone Season allowances available for compliance deductions for the control period under § 96.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO<sub>x</sub> Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.

(2) A CAIR NO<sub>x</sub> Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.370(b)(1), (2), (3), or (7) and for each control period thereafter.

(3) A CAIR NO<sub>x</sub> Ozone Season allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO<sub>x</sub> Ozone Season allowance was allocated.

(4) CAIR NO<sub>x</sub> Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System accounts in accordance with subparts FFFF, GG GG, and IIII of this part.

(5) A CAIR NO<sub>x</sub> Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO<sub>x</sub> Ozone Season Trading Program. No provision of the CAIR NO<sub>x</sub> Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.305 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR NO<sub>x</sub> Ozone Season allowance does not constitute a property right.